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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1864**

State of Minnesota,
Respondent,

vs.

Bryan Andrew Judd,
Appellant.

**Filed November 12, 2013
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-CR-12-855

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Julie Loftus Nelson,
Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from his jury conviction, appellant Bryan Andrew Judd argues that there was insufficient evidence to prove beyond a reasonable doubt that he is guilty of first-degree assault. We affirm.

DECISION

We review challenges to the sufficiency of the evidence to determine whether, “given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.” *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quotation omitted). The reviewing court will not disturb the verdict if the jury, acting with the due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We assume that the jury believed the state’s witnesses. *State v. Nissalke*, 801 N.W.2d 82, 108 (Minn. 2011).

In cases that depend primarily on conflicting testimony, it is particularly important to assume that the jury believed the state’s witnesses because it is the jury’s exclusive function to weigh the credibility of witnesses. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). A “jury is free to accept part and reject part of a witness’s testimony.” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). “Inconsistencies or conflicts between one witness and another do not necessarily constitute false testimony or serve as a basis for reversal.” *Id.*

In October of 2011, the victim, K.A., attended a Halloween house party. While at the party, K.A. fell from the front steps of the house and suffered a traumatic brain injury. K.A. has no recollection of the events leading up to his injury. At trial, a witness, B.F., testified that he saw appellant punch K.A. in the side of the head and that K.A. subsequently fell off the front steps to the ground. Regarding this incident, appellant testified that he only held out his hand to keep K.A. from re-entering the house, and K.A. walked into his hand. The jury found appellant guilty of first-degree assault.

A defendant is guilty of first-degree assault if he or she “inflicts great bodily harm” on another. Minn. Stat. § 609.221, subd. 1 (2010). “‘Great bodily harm’ means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2010). Appellant does not dispute that K.A. suffered great bodily harm; he only disputes that the evidence was sufficient to support the jury’s verdict that he assaulted K.A. We disagree.

Appellant attacks B.F.’s testimony, arguing B.F.’s account of the incident did not prove beyond a reasonable doubt that appellant assaulted K.A. because B.F. was intoxicated. Appellant further contends that his version of the events is more credible than B.F.’s, and his version is also consistent with the testimony of another witness. But the jury is the ultimate judge of credibility, and this court defers to that determination. *Mems*, 708 N.W.2d at 531-32. Viewing the disputed testimony in the light most favorable

to the conviction, we assume that the jury credited B.F.'s testimony that appellant punched K.A.

It is within the jury's purview to take into account the intoxication of a witness when weighing testimony. *See State v. Frank*, 364 N.W.2d 398, 400 (Minn. 1985) (allowing evidence that a witness was intoxicated because it bears on the witness's capacity to observe and recollect the events in question). At trial, all witnesses who testified to being present at the party also testified to being intoxicated. The jury was able to take their intoxication into consideration when crediting witness testimony. And it is not this court's function to reweigh the jury's credibility determinations.

Appellant also challenges the jury's decision because only one person witnessed the assault. But one person's testimony is sufficient evidence for the jury to convict the appellant of assault, and for this court to affirm the jury's verdict. *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (“[A] conviction can rest on the uncorroborated testimony of a single credible witness.”) (quotation omitted); *State v. Johnson*, 322 N.W.2d 358, 359 (Minn. 1982) (finding the jury was “justified in crediting the testimony of the state's eyewitness and in discrediting the testimony of defendant and his friend” that was used to support a first-degree assault conviction when victim had no memory of the assault).

Viewing the evidence in the light most favorable to the verdict, we conclude that sufficient evidence supports the jury's verdict that appellant committed first-degree assault.

Affirmed.